

**United States Department of Labor
Employees' Compensation Appeals Board**

J.M., Appellant)	
)	
and)	Docket No. 10-823
)	Issued: November 15, 2010
DEPARTMENT OF THE NAVY, NAVAL)	
SUPPLY SYSTEMS COMMAND, Gulfport, MS,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 1, 2010 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated September 29, 2009 and January 4, 2010 that denied his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has any impairment caused by his accepted right forearm and elbow sprain or right lateral epicondylitis.

On appeal, appellant asserts that he does not have full use of his arm and sustained a permanent impairment due to pain.

FACTUAL HISTORY

On July 8, 2008 appellant sustained employment-related sprains of the right elbow and forearm and right lateral epicondylitis when he injured his arm unloading pallets. On February 16, 2009 Dr. David B. Clause, a Board-certified orthopedic surgeon, performed a

revision of the right lateral epicondylectomy. Appellant received wage-loss compensation for the period February 13 through March 13, 2009. He returned to light duty on March 16, 2009. Appellant was subsequently placed on administrative leave following his arrest in April 2009. A May 28, 2009 functional capacity evaluation (FCE) demonstrated that appellant had the ability to work at the medium level with lifting/carrying up to 50 pounds on an occasional basis. Appellant was terminated for cause on May 7, 2009.

In reports dated June 25, 2009, Dr. Clause reviewed the FCE findings and advised that appellant could work eight hours a day with a permanent 50-pound restriction on pushing, pulling and lifting. Appellant's elbow range of motion was full with good strength and some aches and pains. Dr. Clause advised that maximum medical improvement had been reached. Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),¹ he found that appellant had no permanent impairment.

On July 27, 2009 appellant submitted a schedule award claim. In letters dated August 5 and 17, 2009, the Office advised him of the evidence needed to support his schedule award claim.

In a decision dated September 29, 2009, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish any permanent impairment.

In an October 6, 2009 report, Dr. Clause reiterated that appellant had no permanent impairment of the right upper extremity. On October 14, 2009 appellant requested reconsideration of the denial of his schedule award claim.

In a merit decision dated January 4, 2010, the Office found that appellant was not entitled to a schedule award for his accepted right upper extremity injury. It noted that Dr. Clause's June 25 and October 6, 2009 reports found no impairment of the right arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,² and its implementing federal regulations,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used

¹ A.M.A., *Guides* (6th ed. 2008).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

to calculate schedule awards.⁵ For decisions issued after May 1, 2009, the sixth edition will be used.⁶

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁷ Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).⁸ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁹

ANALYSIS

The Office accepted that appellant sustained employment-related sprains of the right elbow and forearm and right lateral epicondylitis when he was injured on July 8, 2008. On February 16, 2009 Dr. Clause, an attending orthopedic surgeon, performed surgical repair of the right elbow.

To support a schedule award claim, the record must contain competent medical evidence which shows that the impairment has reached a fixed state, or maximum medical improvement, and describes the impairment in sufficient detail. The attending physician should make the evaluation whenever possible.¹⁰ In a June 25, 2009 report, Dr. Clause noted that he had reviewed FCE findings, performed a physical examination, and advised that maximum medical improvement had been reached. He concluded that under the A.M.A., *Guides* appellant had an impairment rating of zero percent. On October 6, 2009 Dr. Clause reiterated his conclusion that appellant had no impairment to the right upper extremity.

Not all medical conditions accepted by the Office result in permanent impairment to a scheduled member. The medical evidence of record from the attending surgeon does not establish that appellant's accepted right elbow condition caused or contributed to any permanent impairment of his right arm. There is no probative medical evidence to establish that appellant sustained a permanent impairment of his right upper extremity.¹¹

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁷ A.M.A., *Guides*, *supra* note 1 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

⁸ A.M.A., *Guides*, *supra* note 1 at 385-419.

⁹ *Id.* at 411.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6 (January 2010).

¹¹ The Board notes that appellant retains the right to submit a claim for a schedule award based on new exposure or on medical evidence indicating the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

CONCLUSION

The Board finds that appellant did not establish that he has any impairment to his right upper extremity injury that would entitle him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2010 and September 29, 2009 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: November 15, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board